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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,688	02/07/2001	Michio Miwa	0102/0156	5310

21395 7590 06/29/2005

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EXAMINER
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VIEAUX, GARY

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/777,688

Applicant(s)

MIWA ET AL.

Examiner

Gary C. Vieaux

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2 and 3 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 2 and 3 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Amendment*

The Amendment filed February 23, 2005 has been received and made of record.  
In response to the first Office Action, the title has been amended.

- 5           In response to Applicant's amended title, the Examiner finds the amended title of the invention to be more clearly indicative of the invention to which the claims are directed. Therefore, the objection to the title is withdrawn.

### *Response to Arguments*

- 10           Applicant's arguments filed on February 23, 2005, have been fully considered but they are not persuasive.

Regarding claim 2, Applicant contends that the Ishida reference does not disclose the moving of the lens to among predetermined positions that are different from each other (Remarks, p. 3.) The Examiner respectfully disagrees.

- 15           Ishida, provides for movement of the lens via use of a stepper motor (col. 5 lines 3-5), as well as indicating this motor being driven by a number of pulses from a reference position (col. 5 lines 15-17.) It is clear that the lens of Ishida is being moved among predetermined positions, via use of the stepper motor, that are different from each other, per claim 2 as currently written.

- 20           Applicant further contends that the Ishida reference does not disclose analyzing the frequencies of the video signals that are generated when the in-focus position coincides with the predetermined positions, the deciding of the highest frequency, and,

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after the decision, the indicating of the video signal that has the highest frequency  
(Remarks, p. 4.) The Examiner respectfully disagrees.

The relevant portion of claim 2, as currently written, provides "third means for analyzing frequencies of video signals which are generated by the first means when the  
5 in-focus position coincides with the predetermined positions respectively; fourth means for deciding a highest of the frequencies analyzed by the third means; and fifth means for indicating the video signal having the highest frequency decided by the fourth means." Ishida correspondingly provides frequency analysis of the image signals based on positioning, in which the lens is focused when the high-frequency component is  
10 maximized (col. 5 lines 3-17), and where the CPU receives a signal indicating this in-focus status (col. 11 lines 13-19.)

Based on the foregoing, the Ishida reference is found to be able to be read on the language of claim 2, as currently written, and therefore the Examiner stands behind the original rejection.

15 Additionally, Applicant questions the statutory basis of the rejection of claim 2, in that the Applicant believes the Ishida et al. (EP 0908846A2) to be a 35 U.S.C. 102(e) reference and not a 35 U.S.C. 102(b) reference as originally applied in the Office Action of December 1, 2004. Applicant directs attention to the February 15, 2000 date of the Japanese application JP 2000-36120 from which the instant application claims priority,  
20 and a date Applicant asserts should be applied when considering the Ishida reference, which has a publication date of April 14, 1999.

Applicant is respectfully reminded of M.P.E.P. §2133.02, regarding 35 U.S.C. 102(b) rejections, which states "[a] rejection under 35 U.S.C. 102(b) cannot be overcome by affidavits and declarations under 37 CFR 1.131 (Rule 131 Declarations), *foreign priority dates*, or evidence that applicant himself invented the subject matter.

- 5 Outside the 1-year grace period, applicant is barred from obtaining a patent containing any anticipated or obvious claims. In re Foster, 343 F.2d 980, 984, 145 USPQ 166, 170 (CCPA 1965) (Emphasis Added.)

Regarding claim 3, Applicant contends the Komiya reference fails to disclose, or suggest, the moving of the lens to change in an in-focus position among predetermined  
10 positions that are different from each other (Remarks, p.5.) The Examiner respectfully disagrees.

Komiya provides means for moving the lens to change an in-focus position via a pulse motor (fig. 1 indicator 16) and a motor driving circuit (fig. 1 indicator 16), as well as clearly providing predetermined positions (col. 2 lines 47-48.) It is clear that the lens  
15 of Komiya is being moved among predetermined positions different from each other, via use of the pulse motor and motor driving circuit in conjunction with the optical system (fig. 1 indicator 1), per claim 3 as currently written.

Applicant also contends (Remarks p. 5) that "Komiya moreover fails to teach any third means to six means, at minimum, and the respective functions performed by those  
20 means, as recited in claim 3." However, Applicant provides no other direction as to these failings or is not found to point out particular distinctions from the reference.

The relevant portion of claim 3, as currently written, provides "third means for analyzing frequencies of video signals for each of different bands, said video signals being generated by the first means when the in-focus position coincides with the predetermined positions respectively, fourth means for detecting a frequency  
5 component difference among the video signals from results of said analyzing by the third means for each of the different bands, fifth means for deciding a greatest of the frequency component differences detected by the fourth means and corresponding to the respective different bands, sixth means for detecting frequency components in the respective video signals for the band corresponding to the greatest frequency  
10 component difference decided by the fifth means from the results of said analyzing by the third means." Komiya correspondingly provides frequency band analysis of the image signals based on positioning (col. 1 lines 48-54; col. 2 lines 36-51), in which a frequency component difference from the image signal is detected (col. 1 lines 62-64), and a greatest difference is determined (col. 1 lines 64-67), followed by detection of  
15 frequency components corresponding to that difference (col. 1 line 67 – col. 2 line 4.)

Based on the foregoing, the Komiya reference is found to be able to be read on the language of claim 3, as currently written, and therefore the Examiner stands behind the original rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- 5 (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 2** is rejected under 35 U.S.C. 102(b) as being anticipated by Ishida et al.

10 (EP 0 908 846 A2.)

Regarding claim 2, Ishida teaches an object monitoring apparatus comprising:

a movable lens (Fig. 8 indicator 12; col. 4 lines 34-36);

first means for converting an image, represented by light passing through the lens, into a video signal (Fig. 8 indicators 3 and 4; col. 4 lines 36-45);

- 15 second means for moving the lens to change an in-focus position, on which a combination of the lens and the first means is focused, among predetermined positions different from each other (Fig. 8 indicator 8; col. 4 line 45 – col. 5 line 17);

- third means for analyzing frequencies of video signals which are generated by the first means when the in-focus position coincides with the predetermined positions  
20 respectively (Fig. 8 indicator 8; col. 5 lines 3-17);

fourth means for deciding a highest of the frequencies analyzed by the third means (Fig. 8 indicator 8; col. 5 lines 3-17);

and

- fifth means for indicating the video signal having the highest frequency decided  
25 by the fourth means (Fig. 20; col. Step S40; col.11 lines 13-19.)

**Claim 3** is rejected under 35 U.S.C. 102(b) as being anticipated by Komiya (US #5,115,262.)

Komiya teaches an object monitoring apparatus comprising:

a movable lens (Fig. 1 indicator 1; col. 2 line 36-39);

5 first means for converting an image, represented by light passing through the lens, into a video signal (Fig. 1 indicator 2; col. 1 lines 37-50);

second means for moving the lens to change an in-focus position, on which a combination of the lens and the first means is focused, among predetermined positions different from each other (Fig. 1 indicators 15 and 16; col. 2 lines 36-51);

10 third means for analyzing frequencies of video signals for each of different bands, said video signals being generated by the first means when the in-focus position coincides with the predetermined positions respectively (Fig. 1 indicator 5; col. 1 lines 48-54; col. 2 lines 36-51);

fourth means for detecting a frequency component difference among the video  
15 signals from results of said analyzing by the third means for each of the different bands (Fig. 1 indicator 5; col. 1 lines 62-64);

fifth means for deciding a greatest of the frequency component differences detected by the fourth means and corresponding to the respective different bands (Fig. 1 indicator 8; col. 1 lines 64-67);

20 sixth means for detecting frequency components in the respective video signals for the band corresponding to the greatest frequency component difference decided by



the fifth means from the results of said analyzing by the third means (Fig. 1 indicator 9; col. 1 line 67 – col. 2 line 4);

seventh means for deciding a highest of the frequency components detected by the sixth means (Fig. 1 indicator 7; col. 2 lines 14-19 and 39-51);

5 and

eighth means for indicating the video signal having the highest frequency component decided by the seventh means (Fig. 1 indicator 7; col. 2 line 56 – col. 3 line 10).

10

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within  
15 TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later  
20 than SIX MONTHS from the mailing date of this final action.

**Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Vieaux whose telephone number is 571-272-7318. The examiner can normally be reached on Monday - Friday, 8:00am - 4:00pm.

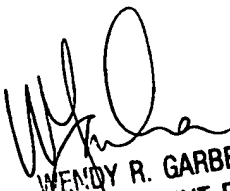
5 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wendy Garber can be reached on 571-272-7308. The fax phone number for the organization where this application or proceeding is assigned will be 703-872-9306 until September 15, 2005, with a new fax phone number of 571-273-8300 going into effect beginning July 15, 2005.

10 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should  
15 you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gary C. Vieaux  
Examiner  
Art Unit 2612

Gcv2

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